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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Application by SBC Communications, Inc.)
for Authorization to Provide In-Region,)
InterLATA Services in Kansas and Oklahoma)
_____)

CC Docket No. 00-217

**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC
COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE
IN-REGION, INTERLATA SERVICES IN KANSAS AND OKLAHOMA**

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<u>706 Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunication Capability</u> , CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 F.C.C.R. 24011 (1998).
<u>Collocation Order</u>	<u>In re Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport</u> , CC Docket No. 94-97, Report and Order, 10 F.C.C.R. 6375 (1995)
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<u>Line Sharing Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , CC Docket No. 98-147, Third Report and Order, 14 F.C.C.R. 20912 (1999)
<u>NY Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (1999), <u>aff'd</u> , <u>AT&T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000).
<u>TX Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</u> , CC Docket No. 00-65, Memorandum Opinion and Order, FCC No. 00-238 (rel. June 30, 2000)
<u>Universal Service Report</u>	<u>In re Federal-State Joint Board on Universal Service</u> , CC Docket No. 96-45, Report to Congress, 13 F.C.C.R. 11501 (1998).

Declarations and Affidavits	
Chapman Decl.	Declaration of Carol A. Chapman on Behalf of SBC Communications Inc. (SWBT App. A, Tab 3)
Cleek Decl.	Declaration of Charles H. Cleek on Behalf of SBC Communications Inc. (SWBT App. A, Tab 9)
Dysart/Noland/Smith Decl.	Joint Declaration of William R. Dysart, Brian D. Noland and David R. Smith on Behalf of SBC Communications Inc. (SWBT App. A, Supplemental)
Ham Decl.	Declaration of Elizabeth A. Ham on Behalf of SBC Communications Inc. (SWBT App. A, Tab 15)
McMillon & Lichtenberg Decl.	Joint Declaration of Terri McMillon and Sherry Lichtenberg on Behalf of WorldCom, Inc. (attached hereto as Tab A)
Noland/Smith Decl.	Joint Declaration of Brian D. Noland and David R. Smith on Behalf of SBC Communications Inc. (SWBT App. A, Tab 17)
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<u>New York DSL Order</u>	<u>In re Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services</u> , Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, Case No. 00-C-0127 (NYPSC October 31, 2000) (available at http://www.dps.state.ny.us/fileroom/doc8727.pdf)
Project No. 20400 Transcript	<u>Section 271 Compliance Monitoring of SWBT of Texas</u> , Project 20400, Transcript (Tex. PUC Sept. 11, 2000) (excerpt attached hereto as Tab C)
SWBT's Response to WorldCom's Okla. Discovery Request No. 1-III.D(13)	SWBT's Response to WorldCom's Okla. Discovery Request No. 1-III.D(13), Cause No. PUD970000560 (Okla. PUC July 25, 2000) (attached to McMillon & Lichtenberg Decl. as Tab 1)

SWBT's Response to Sprint's Okla. Discovery Request No. 1	SWBT's Response to Sprint's Okla. Discovery Request No. 1, Cause No. PUD970000560 (Okla. PUC Aug. 8, 2000) (attached to McMillon & Lichtenberg Decl. as Tab 2)
<u>Texas DSL Order</u>	<u>Petition of Southwestern Bell Telephone Co. for Arbitration with AT&T Communications of Texas et. al Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996</u> , Arbitration Award, Docket No. 22315 (Tex. PUC Sept. 13, 2000) (attached hereto as Tab B)

INTRODUCTION AND EXECUTIVE SUMMARY

In its decision granting Southwestern Bell's ("SWBT's") section 271 application for Texas, the Commission found that the third party test of SWBT's operations support systems ("OSS") was deficient in numerous respects, but that the inadequacies of the test were offset by successful and substantial commercial usage of SWBT's OSS in Texas. The same cannot be said of SWBT's OSS in Kansas and Oklahoma. There was no third party test of any kind in either state, there is no track record of significant commercial usage of SWBT's OSS in Kansas or Oklahoma, and SWBT has not proven that its OSS in Kansas and Oklahoma is identical to that in Texas. The adequacy of SWBT's OSS in Kansas and Oklahoma is largely unknown.

A second deficiency with SWBT's application, which will have significant competitive impact as the demand for broadband services continues to grow, is that SWBT fails to explain the terms under which it permits WorldCom and other competitive local exchange carriers ("CLECs") using the UNE-Platform ("UNE-P") to engage in line splitting in order to provide voice and high speed data services over the same line. Nor does SWBT demonstrate any capability to do so. SWBT's position is particularly troubling in Kansas, where it appears to be unwilling to provide the basic elements needed to allow line splitting by CLECs using UNE-P to provide competitive local service.

SWBT has also failed to satisfy the competitive checklist because it refuses to pay reciprocal compensation to all CLECs for the exchange of calls to local Internet service providers ("ISPs"). Federal court decisions lead inexorably to the conclusion that reciprocal compensation must be paid for calls to ISPs. SWBT makes such payments in Texas, where it was ordered to do so as part of the Texas commission's evaluation of SWBT's checklist compliance, but SWBT

refuses to make such payments in Kansas or Oklahoma. SWBT therefore continues to violate checklist requirement (xiii), and its application should be denied on that basis as well.

SWBT's OSS

SWBT has processed only 17,000 UNE-P orders in Kansas and 6,000 in Oklahoma – a small fraction of the tens of thousands of UNE-P orders that were processed on a monthly basis in New York and Texas prior to section 271 entry in those states. Indeed, the total number of orders processed using EDI – the OSS interface WorldCom and other competitors must use to compete on a broad scale – is only 61 in Kansas and 256 in Oklahoma. This trivial level of commercial usage, coupled with the absence of any third party OSS testing, is insufficient to show that SWBT's OSS is operationally ready in Kansas and Oklahoma.

SWBT attempts to excuse the absence of a third party test and commercial order volumes by pointing to its processing of tens of thousands of orders in Texas, where it claims the OSS is identical to that used in Kansas and Oklahoma. WorldCom agrees that if OSS is truly identical across several states, evidence of substantial and successful commercial usage in one state is relevant to assessing the OSS in a sister state. There are, however, two problems with SWBT's attempt to apply that principle here. First, the OSS in Texas is not identical to that used in Kansas and Oklahoma. There are known differences between the systems, such as those resulting from the differing products and regulations in each state. Equally important, there may be many other differences that were not uncovered because there was no independent testing of SWBT's OSS in Kansas or Oklahoma.

Second, to the extent there are substantial similarities between the OSS in Kansas, Oklahoma and Texas, it is significant that WorldCom continues to experience problems with

SWBT's OSS in Texas. While WorldCom's UNE-P launch in Texas has been successful, there are a number of problems with SWBT's OSS – several of which have arisen or worsened since the time of its section 271 approval in Texas – that adversely impact consumers and raise WorldCom's costs. These problems include:

- SWBT creates a “jeopardy” situation on far too many of WorldCom's orders, does so for invalid reasons, and does so too late – often days or weeks after the due date for WorldCom's order.
- When WorldCom increased order volumes, SWBT increasingly failed to return Service Order Completion notices (“SOCs”) on time. As the Commission is aware from the experience with Bell Atlantic's OSS, late provisioning of order status notices can have a devastating impact on competition.
- SWBT has also returned incorrect information on Firm Order Confirmation notices and SOC's, hindering WorldCom's ability to correct customer-reported troubles.
- SWBT continues to reject WorldCom orders for invalid reasons, requiring WorldCom to expend scarce resources to process the incorrectly rejected orders manually.
- SWBT continues to cause lost dial tone for some of WorldCom's customers, a problem that has an obviously serious impact on consumers and on the reputation of new market entrants.

Nearly all of these problems are attributable to SWBT's excessive manual handling of WorldCom's orders. Instead of implementing systemic enhancements to correct these problems, SWBT's response has been to throw more bodies into the process. Increasing the level of human intervention in a process that can and must be automated is a recipe for disaster as order volumes increase throughout the SWBT region. SWBT must implement systemic fixes to these customer-impacting defects in its OSS.

Line Splitting

SWBT can today team with data carriers to provide a package of voice and high speed data services over the same line. To remain competitive, WorldCom and other voice providers must have the same opportunity. WorldCom intends to compete vigorously to provide DSL-based services, including by providing UNE-P-based voice service and engaging in “line splitting” with a data CLEC. The availability of line-splitting between CLECs on reasonable and nondiscriminatory terms is thus a critical piece of the competitive environment.

Unfortunately, SWBT’s brief is entirely silent on line splitting. It does not explain if, let alone how, it will support this vital competitive requirement. At a minimum, SWBT must state clearly and unequivocally what access it offers to allow line splitting, and on what terms and conditions, before its application can be granted. At this time, the most that competitors and regulators can glean from the appendices to SWBT’s application is that in Oklahoma, SWBT will comply with the terms of a Texas arbitration award on line splitting, as long as SWBT is not successful in its challenge to that award; in Kansas, SWBT will not even make that promise, but instead refuses to offer the cross-connects needed to provide line splitting. SWBT thus has failed to meet its burden of showing in its application that it offers reasonable and nondiscriminatory access to network elements required to allow line splitting by competitors.

Reciprocal Compensation

Finally, SWBT has not satisfied checklist item (xiii) because it refuses to pay reciprocal compensation to all CLECs for the exchange of calls to local Internet service providers (“ISPs”). Federal court decisions establish that 47 U.S.C. §§ 251(b)(5) and 252(d)(2) require payment of reciprocal compensation for calls to ISPs. No FCC precedent stands to the contrary. The

Commission's determination that payment of reciprocal compensation for calls to ISPs is not required, and thus is not a checklist item, has been effectively superseded by Bell Atlantic Telephone Cos. v. FCC, 206 F.3d 1, 3 (D.C. Cir. 2000), in which the D.C. Circuit vacated the ISP Order. Given these precedents, SWBT has not satisfied the checklist. Unlike in Texas, where SWBT was ordered by the state commission to pay reciprocal compensation for calls to ISPs in order to comply with the section 271 checklist, SWBT does not do so in either Kansas or Oklahoma. For this reason as well, SWBT's application should be denied.

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In order to satisfy checklist item (ii)^{1/} and allow WorldCom and other competitive local exchange carriers ("CLECs") to compete on an equal footing in Kansas and Oklahoma, Southwestern Bell ("SWBT") must provide reasonable and nondiscriminatory access to its operations support systems ("OSS"). See, e.g., TX Order ¶¶ 94-98; NY Order ¶¶ 83-87; LA II Order ¶ 80.^{2/} In addition, in order to satisfy checklist items (ii) (unbundled elements), (iv) (loops) and (vi) (unbundled switching),^{3/} and offer WorldCom and other competitors an opportunity to satisfy the growing demand for DSL-based services, SWBT must provide reasonable and nondiscriminatory access to network elements needed to allow WorldCom to engage in line splitting using the UNE-Platform ("UNE-P"). See TX Order ¶¶ 324-325; see also id. ¶¶ 214-215

^{1/} 47 U.S.C. § 271(c)(2)(B)(ii).

^{2/} A table of citation abbreviations and corresponding full citations is provided on page iv above.

^{3/} 47 U.S.C. § 271(c)(2)(B)(ii), (iv) & (vi).

(incumbent must provide access to combinations of unbundled elements); NY Order ¶¶ 229-230 (same); 47 C.F.R. § 51.307 (incumbent must provide access to unbundled elements, including loops, in a manner that allows a CLEC to provide any telecommunications service that can be offered using the element). SWBT has not yet satisfied these checklist items because its OSS is not proven in Kansas or Oklahoma, and it has not even committed to provide access to network elements for line splitting. Finally, SWBT has also failed to satisfy checklist item (xiii) because it refuses to pay reciprocal compensation to all CLECs for the exchange of calls to local Internet service providers.

I. SOUTHWESTERN BELL HAS NOT SHOWN THAT ITS OSS IS OPERATIONALLY READY IN KANSAS AND OKLAHOMA

The Commission “consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition,” NY Order ¶ 83, and that a Bell Operating Company (“BOC”) must prove that its OSS is operationally ready. See, e.g., TX Order ¶¶ 96, 98. SWBT does not provide a sufficient basis for the Commission to conclude that SWBT is providing operationally ready OSS in Kansas or Oklahoma. SWBT has very little commercial experience with use of its OSS in Kansas or Oklahoma, and neither state commission has conducted a third party test of the OSS. Because SWBT’s limited commercial experience in Kansas and Oklahoma does not demonstrate that its OSS is operationally ready, SWBT relies largely on its experience in Texas. However, SWBT has not met its burden of proving that its experience in Texas is sufficient to show such readiness in Kansas and Oklahoma.

A. SWBT's OSS Is Not Backed By Sufficient
Commercial Experience or a Third Party Test

It is important first to underscore the limited nature of SWBT's OSS experience in Kansas and Oklahoma, especially with respect to UNE-P orders placed via EDI. In total, SWBT has processed only 17,048 UNE-P orders in Kansas and only 6,288 in Oklahoma.^{4/} SWBT Br. at 15, 18. The number of UNE-P orders SWBT processes each month is insignificant,^{5/} and the number of those orders placed over EDI is particularly minuscule. Even SWBT acknowledges that "[f]or orders submitted via EDI, volumes are relatively low in Kansas." Noland/Smith Aff. ¶ 89. The same is true in Oklahoma. Indeed, in August, SWBT processed only 61 total orders over EDI in Kansas and only 256 in Oklahoma. Ham Aff. ¶ 29. This includes orders of all types, not just UNE-P.

EDI is the interface WorldCom and other CLECs must use if they are to provide service at commercial volumes. And UNE-P is the only mode of entry with the potential to provide ubiquitous mass-market service to residential customers in the near term.^{6/} Thus, SWBT has

^{4/} Moreover, many, if not all, of those UNE-P orders were placed by a carrier, Birch, that until recently indicated it was experiencing significant problems with SWBT's OSS. However, after obtaining other consideration from SWBT, Birch agreed to support SWBT's application. Of course, this does not show that Birch's prior complaints were unwarranted.

^{5/} Indeed, it is not at all clear whether any CLEC provides more than a de minimus amount of local residential service over its own facilities in Kansas or Oklahoma, and thus whether SWBT even satisfies Track A, 47 U.S.C. § 271(c)(1)(A). The Commission must confirm the accuracy of SWBT's dubious claims of facilities-based residential competition and verify whether SWBT has satisfied Track A. For its part, WorldCom has not launched any facilities-based residential service in either Kansas or Oklahoma.

^{6/} WorldCom remains committed to providing local residential service throughout the country using UNE-P, as long as market conditions (including UNE prices and the ILECs' OSS) allow for profitable competitive entry. WorldCom is already competing vigorously for local

almost no experience with the one method of entry that could provide meaningful state-wide residential competition in Kansas and Oklahoma. In contrast, in New York, Verizon processed 70,000 UNE orders in the month prior to its application, most of which were transmitted via EDI. NY Order ¶ 169. Similarly, in Texas, SWBT had processed a relatively high volume of UNE-P orders in the month prior to its application. TX Order ¶ 249.

The Commission has indicated that where a BOC lacks sufficient commercial experience with its OSS, it may be able to rely on a third party test to prove the readiness of its OSS. TX Order ¶ 98. SWBT relied in part on such a test in its Texas application, although the Commission noted deficiencies in the test and based its evaluation largely on SWBT's commercial experience. See, e.g., TX Order ¶ 103. In Kansas and Oklahoma, not only does SWBT lack commercial experience, there was no third party test. SWBT therefore points to its Texas experience as evidence of readiness of its systems in Kansas and Oklahoma. However, contrary to SWBT's claims, SWBT's OSS in Texas is not identical to its OSS in Kansas and Oklahoma.

B. SWBT's OSS Is Not Identical Across Texas, Oklahoma and Kansas

SWBT's OSS interfaces vary from state to state as a result of product and regulatory differences among the states. If SWBT does not properly account for such differences in its documentation, CLECs cannot program their interfaces correctly. McMillon & Lichtenberg Decl. ¶¶ 18-20. SWBT must also account for such differences in programming its side of the

residential customers, using UNE-P, in large parts of New York, Texas and Pennsylvania, and plans to expand into any other state in which the ILEC's OSS systems are ready and entry could be profitable, which is not currently the case in Kansas and Oklahoma.

interfaces as well as its back-end systems. Id. Otherwise, an order that is processed properly in Texas will not be processed properly elsewhere. There is no way to know that SWBT has accounted for such differences, however, until a CLEC (or other third party) actually builds an interface and successfully transmits orders -- something no CLEC or third party has done. McMillon & Lichtenberg Decl. ¶ 25.

As with its interfaces, SWBT's back-end systems differ somewhat from state to state. As SWBT acknowledged more forthrightly in state proceedings than it does here, "MOKA [Missouri, Oklahoma, Kansas and Arkansas] orders are generally processed on processors located in the St. Louis Data Center; Texas orders are generally processed on processors located in the Dallas Data Center."^{7/} Although the two processors and the software they run are allegedly copies of one another, there is no way of knowing they are identical without actual experience. This is particularly true with respect to software. Software can be updated properly on one processor without being updated properly on another processor. McMillon & Lichtenberg Decl. ¶ 21.

These examples may not appear to be vast differences, but they are enough to necessitate real evidence that SWBT's OSS works in Kansas and Oklahoma, as well as in Texas. Moreover, there may well be other undisclosed differences between SWBT's OSS in Texas and its OSS in Kansas and Oklahoma. The only evidence otherwise is a bare-bones assertion from SWBT and

^{7/} SWBT's Response to WorldCom's Okla. Discovery Request No. 1-III.D(13) (McMillon & Lichtenberg Decl. attach. 1). Moreover, "[t]he Dallas SORD processor" -- not the St. Louis Center -- "was used in the Texas 3rd Party Test." SWBT's Response to Sprint Okla. Discovery Request No. 1 (McMillon & Lichtenberg Decl. attach. 2) Thus, neither SWBT's commercial experience nor the Telcordia test in Texas made use of the St. Louis processor.

Ernst & Young, SWBT's long-time accountant, which was hired by SWBT to opine on similarities between the states. But Ernst & Young conducted its evaluation without any input from CLECs, did not provide any explanation of the methodology it used, and did not even explain exactly which aspects of the OSS it found to be identical from state to state. Moreover, Ernst & Young's analysis is further undermined by the fact that it did not even acknowledge the known differences in OSS among the states. McMillon & Lichtenberg Decl. ¶ 22.

As for SWBT's own claim that it relies on the same OSS for all three states, that assertion is too general to be credited. Qwest made a similar statement regarding the OSS in its region, yet a third party test has revealed a number of important differences in the OSS across Qwest's region.^{8/} Verizon made similar assertions regarding its OSS in New York and Massachusetts, yet when KPMG conducted a third party test in Massachusetts, it opened numerous observations and exceptions detailing defects in Verizon's systems that needed to be corrected. McMillon & Lichtenberg Decl. ¶¶ 23-24. A similar test in Kansas and Oklahoma would almost certainly reveal important problems in those states as well.

WorldCom is not arguing that a third party test, or this Commission's evaluation, should ignore proven similarities between the systems in the three states. Because a single legacy company – SWBT – historically provided local telephone service for all three states, it is quite likely that the OSS is more similar between these three states than between other states in the

^{8/} Indeed, SWBT claimed three years ago, as part of its first section 271 application for Oklahoma, that its OSS in Oklahoma was operationally ready in all respects. If SWBT is correct that its OSS in Kansas, Oklahoma and Texas is even close to identical, the Texas PUC's 1998 findings of clearly inadequate OSS, see TX Order ¶¶ 12-13, show that SWBT's self-evaluation of its OSS is not to be trusted. The Commission has never before credited self-serving claims of operationally ready OSS, and it should not do so here.

country (such as New York and Massachusetts which did not belong to a single legacy operating company). Nonetheless, since SWBT relies largely on its experience in Texas to prove the readiness of Kansas and Oklahoma OSS, it must provide better independent evidence of the similarities of OSS among the states – a much more granular analysis that explains and confirms exactly where the systems are similar and where they are different. SWBT must also provide some evidence that the known differences in OSS between Texas, Kansas and Oklahoma are operationally irrelevant. At a minimum, SWBT must show that someone – either a third party tester or a CLEC – has used SWBT’s documentation to build an EDI interface in each state to transmit UNE-P orders. Otherwise, there is no evidence, beyond assertions, that a CLEC that relies on SWBT’s documentation to construct an interface in those states will be successful. As a result of product and regulatory differences, a CLEC that wishes to transmit orders via EDI in Kansas or Oklahoma cannot simply use the interface it built in Texas to do so. McMillon & Lichtenberg Decl. ¶¶ 20, 25.

C. WorldCom’s Texas Experience Has Revealed Important OSS Defects

SWBT’s reliance on its Texas experience to prove the readiness of its OSS also presumes that SWBT’s OSS is working without problems in Texas. It is not. Although WorldCom has been able to use SWBT’s OSS in Texas to submit a relatively high volume of orders, there continue to be a number of problems with SWBT’s OSS that, in the aggregate, impede WorldCom’s ability to compete and should be corrected before SWBT is granted section 271 authority in additional states. Many of these problems are related to two defects in SWBT’s OSS: (1) SWBT breaks every UNE-P order into three separate service orders -- the “N” order, “C” order and “D” order -- multiplying the potential for error and risking significant problems if

the orders become disassociated, and (2) SWBT relies on too much manual processing. At least partly as a result, SWBT's OSS performs poorly in several ways, as demonstrated by experience with SWBT's OSS in recent months.

1. Jeopardies. SWBT returns too many jeopardy notifications, returns them for unacceptable reasons, and returns them late. SWBT returned 4,281 jeopardies to WorldCom in August in Texas, 3,531 in September and 3,663 in October. McMillon & Lichtenberg Decl. ¶ 27. Region-wide, for all CLECs, SWBT's own figures show that it returned jeopardies on 5.83% of orders in June, 7.63% in July and 8.58% in August. Noland/Smith Aff. ¶ 68. This is far too many. Contrary to SWBT's claim, the high number of jeopardies appears to be largely SWBT's fault. Fully 20% of the jeopardies SWBT returned to WorldCom in August through September were to notify WorldCom of a new due date, and 62% of these were on UNE-P migration orders. McMillon & Lichtenberg Decl. ¶ 30. SWBT should be returning few, if any, jeopardies for new due dates on UNE-P migration orders. There is no reason SWBT should modify the due date on such orders since WorldCom requests due dates based on the standard interval or longer. Id. SWBT also returned many jeopardies to WorldCom on UNE-P migrations for "verification of address,"^{9/} "missed appointments," "account not eligible," "field visit determined address invalid," "no access to end user premises" and other similar reasons. SWBT should not be sending such jeopardies on UNE-P migrations. UNE-P migrations do not require appointments, field visits, or access to the end user premises, for example. Id. ¶¶ 31-33.

^{9/} SWBT is now stripping the address off CLEC migration orders, so there should not be any address to verify.

SWBT's performance data on SWBT-caused changes in due dates do not show that CLECs bear responsibility for the high number of jeopardies. SWBT acknowledges that after one CLEC asked for a reconciliation of data on SWBT-caused missed due dates, SWBT determined that some of SWBT's data were erroneous. Noland/Smith Aff. ¶ 76. SWBT does not provide the reconciled data, however, so we can only speculate as to what those data show. SWBT does provide some data on changed due dates that is based on SWBT's reevaluation of its overall performance data for this measure. Noland/Smith Aff. ¶ 80. The data show unacceptable performance -- at least for UNE-P orders needing field work in Kansas. Dysart/Noland/Smith Aff. ¶ 53. The data also show worse performance for CLECs than for SWBT retail customers in Oklahoma in each of the last four months for UNE-P orders that do not need field work. Dysart/Noland/Smith Aff. Att. AA-7. Moreover, as explained above, WorldCom's own data on UNE-P migration orders show that SWBT changes due dates on CLEC orders far too often for its own reasons -- much more than even SWBT's new data would suggest. McMillon & Lichtenberg Decl. ¶¶ 34, 41. It is therefore likely that SWBT's new data underestimate the problem. There is no reason to presume SWBT's new data are accurate given SWBT's acknowledged problem with the prior data.

Further, even if CLECs, not SWBT, were the primary cause of the high number of jeopardies, SWBT's performance would still be inadequate because SWBT takes too long to return these jeopardies. In August, SWBT returned 3,727 of 4,281 WorldCom jeopardies in Texas after the due date on these orders had already passed and returned 1,223 of these jeopardies (29% of the jeopardies) more than 60 days after the due date. McMillon & Lichtenberg Decl. ¶ 35. There is no excuse for SWBT to be returning jeopardies more than 60

days after the due date -- and changing the due date by 60 days or more -- regardless of who caused the jeopardy.^{10/}

When SWBT returns jeopardy notifications after the due date, it precludes WorldCom from notifying its customers that fulfillment of their orders has been delayed. Customers become angry at WorldCom when they learn that they have not been migrated to WorldCom as they requested. Customers also continue to receive service and bills from their original carrier, not WorldCom, causing WorldCom to lose significant revenue. Moreover, when WorldCom receives jeopardies more than 60 days after the due date, it must repeat the third party verification process to make sure the customer still desires to switch to WorldCom. In such circumstances, many customers no longer want to switch and WorldCom's reputation also suffers. McMillon & Lichtenberg Decl. ¶¶ 36-38.

The Commission previously concluded that SWBT's jeopardy process was adequate in Texas because (i) SWBT was issuing jeopardies on fewer than 5% of CLEC orders, (ii) the jeopardies did not appear to be delaying provisioning, and (iii) SWBT was held accountable through its performance measures for SWBT-caused missed due dates. TX Order ¶ 185. Now, however, the number of jeopardies is higher than 5%, the resultant delays are extensive, and these delays do not appear to be effectively captured in SWBT's performance measures. SWBT should improve its jeopardy process before gaining section 271 approval in additional states.

2. SOCs. In May and June of 2000, as WorldCom gradually increased the volume of orders it was submitting in Texas, SWBT began to have difficulty in returning Service Order

^{10/} SWBT does not provide any data on the timeliness of jeopardy notifications and thus has not provided any basis to conclude it returns jeopardies in a timely fashion.

Completions (“SOCs”) on time. Orders began dropping out of SWBT’s back-end systems due to manual SWBT errors (among other reasons). SWBT had to manually re-enter these orders into its systems before they posted to billing. As a result, on July 6, SWBT had not yet returned SOC’s on 233 orders WorldCom had placed in May (for which SOC’s were past due), 1,677 orders WorldCom had placed in June for which SOC’s were past due, and 26 orders WorldCom had placed in July. On August 16, SWBT still had not returned SOC’s on 6 of the orders WorldCom had placed in May, 49 orders it had placed in June, 212 orders it had placed in July and 849 orders it had placed in August. McMillon & Lichtenberg Decl. ¶ 45. Without such notices, WorldCom was unable to begin billing its customers. WorldCom also did not know the customers were its customers when they called for maintenance and repair. Id. ¶ 50.

After extensive effort by WorldCom and SWBT, SWBT has now significantly reduced the number of missing SOC’s in Texas. In recent weeks, when WorldCom transmits lists of missing SOC’s to SWBT, SWBT returns these SOC’s relatively quickly to WorldCom. But SWBT has not fully explained to WorldCom the cause of the missing SOC’s; nor has it explained how it is now able to quickly reflow these SOC’s, even though WorldCom has posed these questions to SWBT directly. McMillon & Lichtenberg Decl. ¶¶ 46-47. WorldCom suspects that SWBT has reduced the number of missing SOC’s simply by throwing more personnel at the problem. This is not a permanent fix, however. For one thing, it does not resolve the problem until after the SOC’s are already late. For another, it is a purely manual fix. While this fix may be working at current volumes with representatives who have recently been trained by SWBT to respond to just this problem, the fix is unlikely to continue to work as SWBT representatives turn

over and as CLEC ordering volumes increase substantially with entry into SWBT states other than Texas. McMillon & Lichtenberg Decl. ¶ 47.

In the Texas order, the Commission found SWBT's performance with respect to SOC's acceptable because SWBT met the benchmark for returning SOC's via EDI in each of the prior three months and came close to meeting that benchmark with respect to the LEX interface. TX Order ¶ 188. Here, however, SWBT has not consistently met the benchmark for EDI orders. McMillon & Lichtenberg Decl. ¶ 48. Moreover, WorldCom's experience shows that the late SOC's SWBT does return are frequently very late and are returned only after significant work on the part of the CLEC. As occurred in Texas when WorldCom increased the volume of orders it was submitting, CLECs are likely to experience substantial problems with current manual processes if they enter the Kansas and Oklahoma markets and begin submitting high volumes of orders.

3. Inaccurate Information. On orders to migrate customers from another CLEC to WorldCom, orders that will become increasingly important as competition expands, SWBT has been transmitting incorrect information on the FOC's and SOC's it returns in Texas. In particular, SWBT has been transmitting the wrong C order numbers. McMillon & Lichtenberg Decl. ¶¶ 51-57.^{11/}

SWBT's failure to transmit the correct C order numbers to CLECs imposes significant costs on CLECs. CLECs cannot easily obtain order status information without the correct C order number because CLECs use that number to access SWBT's Order Status function. CLECs

^{11/} The "C order" is one of the three orders SWBT creates in its back-end systems from every UNE-P migration, each of which is given a number by SWBT.

need access to SWBT's Order Status function for a number of reasons including, for example, to determine whether customers who say they are not receiving call waiting are supposed to be receiving that feature according to SWBT's records. McMillon & Lichtenberg Decl. ¶¶ 52-53. In addition, CLECs need the correct C order number to populate many types of trouble tickets. If CLECs submit an incorrect C order number on the trouble ticket, SWBT may be unable to find and fix the underlying problem. Id. ¶ 54. Before it is granted section 271 approval, therefore, SWBT should be required to implement a systems fix to ensure it transmits correct C order numbers to CLECs. But SWBT has not yet promised to implement any such fix.

4. Rejects. SWBT continues to reject CLEC orders for invalid reasons. In August, SWBT rejected 357 WorldCom orders in Texas on the basis that the accounts were ineligible for conversion to WorldCom; in September, it rejected 358 orders for this reason; and in October, it rejected 471 orders for this reason. (SWBT also transmitted 232 jeopardies in August because the accounts ostensibly were ineligible for conversion, 203 in September, and 250 in October.) McMillon & Lichtenberg Decl. ¶ 58. But SWBT has finally acknowledged that these accounts were eligible for migration. SWBT rejected WorldCom's orders based on erroneous information in its back-end systems. This caused significant additional effort for WorldCom which had to work the orders manually with SWBT before the orders could be processed. SWBT must therefore implement a systems fix to eliminate erroneous rejects for "account not eligible." Again, however, SWBT has not even promised such a fix. Id. ¶ 59.

SWBT also incorrectly rejects some orders on the basis that the customers have already migrated to the CLEC. In particular, SWBT incorrectly rejects some supplemental orders CLECs transmit after receiving jeopardies from SWBT. Because SWBT creates three service orders

from every UNE-P order, it must prevent any of the three orders from completing when it places an order in jeopardy status. When SWBT allows the N order to complete, it then rejects supplemental orders on the basis that the entire migration has been completed, wrongly informing CLECs that “New TN [telephone number] is Already Working.” SWBT rejected 418 WorldCom orders for this reason in August, 471 in September and 554 in October. Seventy-five percent of these rejects were incorrect. *McMillon & Lichtenberg Decl.* ¶¶ 60-61. When CLECs receive such erroneous rejects, they must work the rejects with the SWBT Local Service Center (“LSC”) to attempt to resolve the problem. This causes substantial additional work for the CLEC and delays completion of the order. *Id.* ¶¶ 59, 62.

SWBT recently has provided additional training to its representatives in Texas to ensure they prevent each of the three service orders from completing when a jeopardy is issued (or remove the service orders from completed status if they have already completed). This is not a long term solution, however. As new representatives are added to the LSC due to turnover and increased CLEC orders, the benefit of retraining will likely wear off. *McMillon & Lichtenberg Decl.* ¶ 62. SWBT must implement a systems fix to ensure that none of the service orders proceed to completion when SWBT transmits a jeopardy. Alternatively, SWBT should eliminate the three service order process altogether.

In addition to rejecting orders for invalid reasons, SWBT delays too long in returning manually processed rejects. SWBT consistently misses the benchmark for return of such rejects in Oklahoma and Kansas, as well as in Texas. Although the Commission previously concluded that SWBT has returned manually processed rejects quickly enough, it did so partly because

SWBT's performance had been improving. TX Order ¶ 175. Here it is deteriorating. McMillon & Lichtenberg Decl. ¶¶ 63-64.

5. Loss of Dial Tone. Finally, SWBT's process of creating three service orders from every UNE-P migration order has resulted in loss of dial tone for WorldCom customers. In September, the Texas Commission held a workshop on the three service order process. During that workshop, WorldCom explained that 1,353 of its customers had lost dial tone between August 1 and September 5 and that the three service order process caused or contributed to this level of lost dial tone. SWBT disputed this figure, claiming that WorldCom submitted only 249 total trouble tickets for UNE-P during this time period.^{12/} A data reconciliation showed the real figure was far closer to the one WorldCom provided – 1,208 WorldCom customers lost dial tone between August 1 and September 5. McMillon & Lichtenberg Decl. ¶ 66. One reason SWBT's figures were too low is that SWBT attributed approximately 250 WorldCom trouble tickets to Customer Premises Equipment ("CPE") problems and therefore excluded them from the performance measures which it used to derive its count of lost dial tone. But SWBT's conclusion that these tickets were attributable to CPE is likely erroneous. WorldCom checks for CPE problems before it submits trouble tickets and did not find CPE problems for any of the customers for whom it submitted tickets. Id. ¶ 68.

^{12/} SWBT's witness stated as follows:

I'm Bill Hall, Jr., out of the performance analysis group. Just to answer the numbers that they are alleging for no dial tone, the 1353 that WorldCom is saying, since August 1, I pulled some data from August 1st through September 9th that includes all the UNE-P trouble reports, the C orders that are – of course, we're talking about UNE-P conversions here – and I get 249 in Texas.

Project No. 20400 Transcript, at 34 (September 11, 2000).

During the reconciliation, WorldCom determined that 179 customers lost dial tone as a result of SWBT's three service order process. (SWBT has yet to reach its own determination.) McMillon & Lichtenberg Decl. ¶ 69. Although the amount of lost dial tone caused by the three service order process has, to date, been less than WorldCom feared, it is not the "very rare" occurrence the Commission deemed acceptable in its Texas Order. TX Order ¶ 199. Any unnecessary loss of dial tone is too much given the impact to CLECs and their customers. The Commission should not approve SWBT's section 271 entry into additional states until it eliminates the three service order process or fixes it to prevent the risk of lost dial tone.

SWBT's three service order process, along with too much manual processing, is at the root of SWBT's OSS problems. SWBT returns SOC's and jeopardies too late primarily because SWBT representatives make manual errors in typing one of the three service orders. SWBT returns incorrect C orders to CLECs in part because SWBT creates C orders in the first place. And SWBT incorrectly rejects orders because, when SWBT places orders in jeopardy status, its representatives do not always prevent all three service orders from proceeding to completion. McMillon & Lichtenberg Decl. ¶¶ 30, 46, 61, 71-72. SWBT should reduce manual processing and fix or eliminate the three service order process before it gains section 271 entry.

In conclusion, it is important to emphasize that WorldCom is not arguing that SWBT's OSS is performing terribly in Texas. Nor is WorldCom arguing that SWBT's Texas experience is irrelevant in assessing the readiness of SWBT's OSS in Kansas and Oklahoma. The point is that SWBT's OSS has known defects that should be fixed. At present, however, SWBT has not even agreed to do so, let alone implemented enhancements. And SWBT should provide some evidence, specific to Kansas and Oklahoma, that CLECs can construct a working EDI interface

in those states to process UNE-P orders. SWBT has not provided sufficient evidence that CLECs can use SWBT's OSS in Kansas and Oklahoma to successfully order commercial volumes of UNE-P service on reasonable and nondiscriminatory terms.

II. SOUTHWESTERN BELL HAS NOT SHOWN THAT IT IS OFFERING REASONABLE AND NONDISCRIMINATORY ACCESS TO UNBUNDLED NETWORK ELEMENTS NECESSARY TO ALLOW CLECS USING UNE-P TO ENGAGE IN LINE SPLITTING

SWBT's brief is conspicuously silent with respect to a checklist obligation critical to the provision of advanced services. An ILEC must "provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier 'to provide any telecommunications service that can be offered by means of that network element.'" TX Order ¶ 325; see also 47 C.F.R. § 51.307. This includes providing both voice and data over the same unbundled loop. As SWBT is well aware, "[a]s a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter." TX Order ¶ 325 (emphasis added). Despite this requirement, SWBT in this application has not indicated if or how it enables one or more competing carriers to provide both voice and data services using UNE-P.

This is an issue of critical competitive importance. Provisioning stand-alone DSL is more expensive and less efficient than provisioning DSL over the same loop as voice service.^{13/} If SWBT is the only carrier that can effectively achieve this more efficient arrangement, consumers will be left with a Hobson's choice between remaining with SWBT and forgoing the competitive

^{13/} See, e.g., Line Sharing Order ¶ 33.

advantages of choice in local voice providers, or leaving SWBT and being forced to accept the inefficient and costly option of installing a second unnecessary loop for data service.^{14/} To avoid this competition-killing dilemma, other voice providers including WorldCom must have the same ability as SWBT to compete, alone or by teaming with data CLECs, to provide a package of services to meet customer demand for high-speed data services.^{15/}

To achieve this and meet the requirement of the Texas Order, when one competing carrier is collocated and provides the splitter, DSLAM, and data service, a BOC must provide a cross-connect to bring the voice channel of the loop back from the carrier's collocation to the ILEC switch, and lease to another competing carrier the combination of cross-connect, unbundled switching and unbundled shared transport necessary to provide a complete UNE-P voice service. The resulting configuration is identical to that used in line sharing between SWBT and a data CLEC that uses its own splitter. It would be grossly discriminatory for SWBT to make this network configuration available for itself, but not its competitors. Moreover, SWBT must have ordering processes in place to permit this configuration to be ordered as easily as a line sharing configuration or a UNE-P configuration may be ordered for an existing voice circuit.

SWBT's brief does not indicate whether it will permit line splitting by CLECs like WorldCom who use UNE-P. Under this Commission's clear directives, it is SWBT's burden to

^{14/} WorldCom agrees with this Commission that "residential and small business customers . . . demand voice-compatible xDSL-based services," Line Sharing Order ¶ 35, and likewise, demand voice service that is compatible with obtaining DSL service.

^{15/} The New York PSC has recognized the importance of line-splitting using UNE-P purchased from the ILEC. Finding this arrangement to be technically indistinguishable from line sharing, and thus "technically feasible, and necessary for competitors to provide their services to customers," the PSC has now ordered Verizon to provide it. See New York DSL Order at 15.

make its case fully in its opening brief, so as not to require the Commission and other commenters to “sift pleadings and documents to identify” positions that are not “stated with clarity.”¹⁶ The importance of this Commission requirement is underscored by the present application, which requires evaluation of evidence regarding two states in the same ninety-day period. This Commission should thus reinforce its consistent directives that BOCs present their positions and evidence in a clear form.

Nonetheless, because of the critical importance of line splitting, WorldCom has attempted to comb through the voluminous attachments and appendices to SWBT’s brief to ascertain its intentions. Unfortunately, the attachments to SWBT’s application suggest that in Kansas, it will not provide the required access to loops and other UNEs to permit UNE-P line splitting where a data CLEC and voice CLEC wish to collaborate. Although SWBT’s brief and declarations are silent on the point, the line sharing amendment to SWBT’s Kansas uniform interconnection agreement specifies:

SWBT shall not be required to provide narrowband service to CLEC “A” and broadband service to CLEC “B” on the same loop. Any line sharing between two CLECs shall be accomplished between those parties and shall not utilize any SWBT splitters, equipment, cross connects or OSS systems to facilitate line sharing between such CLECs.

^{16/} See FCC Public Notice DA-99-1994, Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, at 4 (issued Sept. 28, 1999) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969)), incorporated by reference in FCC Public Notice DA-00-2414, Comments Requested on the Application By SBC Communications Inc. for Authorization Under Section 271 of the Communications Act to Provide In-region, interLATA Service in the States of Kansas and Oklahoma, CC Docket No. 00-217 (issued Oct. 26, 2000).

See Sparks Decl. Attach C-KS, at 8 (K2A Optional Line Sharing Amendment § 4.7.5) (emphasis added).

For SWBT to refuse altogether to provide the necessary cross-connects to its own equipment and OSS to permit CLECs' use of both the high and low frequency capabilities of the loop and of unbundled switching is blatantly discriminatory and obviously violates the competitive checklist (items (ii) (unbundled elements), (iv) (loops) and (vi) (unbundled switching)), the Texas 271 Order and rule 307 (c).^{17/} This provision can hardly be justified on the ground that it properly targets the situation in which two different CLECs are sharing the loop: The Texas 271 Order clearly applies whether one CLEC or two are involved. See TX Order ¶ 324 (defining "line splitting" as the circumstance in which "both the voice and data service will be provided by competing carrier(s)" using a single loop) (emphasis added). In any event, the cross-connects in a two-CLEC configuration are exactly the same as those required for a single CLEC leasing an entire loop to provide both data and voice, where the voice service also uses ILEC unbundled switching and transport. For that matter, as already noted, they are also identical to the cross-connects used for line sharing between SWBT and a CLEC using a CLEC splitter. As such, to disallow CLECs use of this arrangement would be blatantly discriminatory. Before SWBT can be granted section 271 authority in Kansas, it must disavow this section of its Kansas interconnection agreement; clearly commit to provide nondiscriminatory cross-connects

^{17/} See 47 C.F.R. § 51.307(c) ("An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.")

and other support needed to give access to the full capability of the UNE-Platform; and prove that it does indeed provide such facilities.

As for Oklahoma, SWBT indicates in a footnote to one of its declarations that on October 18, 2000, the Oklahoma commission ordered it to provide line splitting. Sparks Decl. ¶ 106 n.32. In the conforming amendment to the O2A (the generic Oklahoma agreement), SWBT promises to implement line splitting on the same terms finally set by Texas regulators. See Sparks Decl. Attach. G-OK.^{18/} But as SWBT indicates in a different declaration, it is currently appealing the Texas line splitting decision. See Chapman Decl. ¶ 100. Before SWBT is granted section 271 authority for Oklahoma, it must explicitly affirm that it recognizes its obligation under the Texas 271 Order to provide UNE-P line splitting today, and explain how it will do so in a reasonable and nondiscriminatory manner, regardless of the outcome of the litigation in Texas.

Indeed, even if SWBT had committed to provide line splitting for UNE-P competitors, it has not carried its burden of demonstrating how this service would be ordered, how it would be provisioned, how quickly the work would be performed, or what the charges would be to the two CLECs who order the service. These are critical considerations. Line splitting for UNE-P users must be available on terms and conditions equivalent to line sharing, without creating

^{18/} Texas state regulators, recognizing its importance in promoting competition, have required SWBT to provide access to its splitters for line splitting arrangements, just as it does for line sharing. See Texas DSL Order, at 15-20 (attached hereto as Exhibit B). Access to ILEC splitters is vital to competition in advanced services. Use of ILEC-owned splitters reduces overall loop length, facilitates metallic loop testing, and most important for consumer welfare, permits free migration from one data provider to another without requiring coordination with a data CLEC of the physical disconnection of the circuit and thus disruption of both voice and data service. For these reasons, this Commission should order open access to ILEC splitters expeditiously, either in this proceeding or through other ongoing Commission dockets.

discriminatory excessive costs and service disruption.^{19/} Nor should SWBT require the ordering of an additional loop other than that already used to provide voice service, unless that loop is not technically capable of providing DSL service. Cf. TX Order ¶ 325 & n. 905.

SWBT has thus refused, in Kansas, to provide reasonable and nondiscriminatory access to its loops for the provision of advanced services, and in both Kansas and Oklahoma it has failed to “explain clearly the method” by which CLECs can order and combine UNEs at cost-based rates. LA II Order ¶ 141. Until SWBT – at a minimum – concretely explains how and on what terms these elements will be offered in a manner that permits this configuration, it cannot be said to be offering, let alone providing in a nondiscriminatory manner, access to unbundled elements that allows data and voice to be provided on the same circuit. This failure is in and of itself a sufficient reason to deny this application.

III. SWBT FAILS TO MEET THE CHECKLIST BECAUSE IT DOES NOT PAY RECIPROCAL COMPENSATION TO ALL CLECS FOR ISP-BOUND TRAFFIC

SWBT has not satisfied checklist item (xiii) because it refuses to pay reciprocal compensation to all CLECs for the exchange of calls to local Internet service providers

^{19/} The Commission has noted that the “cross-connect rates, as well as rates associated with other elements such as cable support and installation, . . . can have a significant impact on . . . total service provisioning costs,” and that unless the relevant prices and procedures are firmly established, a BOC “could load excessive overhead costs onto this critical input.” Collocation Order ¶ 72.

In fact, the charges associated with establishing a line splitting arrangement should be no more than the cost-based charges assessed when establishing a line-sharing arrangement using a CLEC-owned splitter, as the two configurations are physically identical. And where an existing line share customer – one who has been receiving SWBT voice and data CLEC DSL – simply seeks to change his voice provider to a CLEC, even these charges should be absent, for this migration requires no physical work if the data CLEC does not change.

(“ISPs”).^{20/} Indeed, SWBT does not claim ever to have paid reciprocal compensation for any ISP-bound traffic in Kansas, and in Oklahoma it admits that it made such payments only under a single interconnection agreement with Brooks Fiber, as specifically ordered by the Oklahoma commission in an opinion that SWBT is still appealing.^{21/} See SWBT Br. at 117; Sparks Decl. ¶ 139.^{22/} The Brooks Fiber agreement has expired, however, and SWBT is no longer paying reciprocal compensation to Brooks Fiber in Oklahoma despite substantially similar language in the current agreement. See generally SWBT Br. at 116 (indicating continued intention to resist payment of reciprocal compensation for ISP-bound traffic by stating “SWBT will agree to pay

^{20/} In the Texas Order, in response to arguments by Allegiance Telecom of Texas, the Commission stated that “Allegiance does not allege that SWBT fails this checklist item, but merely requests that the Commission reconsider its previous decision to allow states to make determinations regarding reciprocal compensation.” TX Order ¶ 386. Because commenters did “not allege that SWBT fails this checklist item, and also because this issue is before us again due to the [D.C. Circuit] court’s remand, we do not address it in the context of a 271 application.” Id. Moreover, SWBT was paying reciprocal compensation for ISP-bound traffic in Texas pursuant to the Texas PUC’s finding that SWBT was required to do so in order to comply with the competitive checklist. See Commission Recommendation, Project No. 16251, at 10 (Texas PUC June 1, 1998).

In the present case, however, SWBT is not currently paying reciprocal compensation for ISP-bound traffic in Kansas or Oklahoma. WorldCom submits that this failure violates the competitive checklist and thus that this Commission must address the issue in the context of SWBT’s current application.

^{21/} The Oklahoma Commission’s decision was upheld by the United States District Court for the Northern District of Oklahoma. See Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, No. 98-CV-468-K(J), (N.D. Okla. October 1, 1999). SWBT’s appeal of that decision is pending before the 10th Circuit in Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, No. 99-5222.

^{22/} See also KCC Staff Report at 78 (“SWBT is not providing reciprocal compensation for telephone calls to ISPs.”) (Cleek Decl., Attach. A, at 94).

reciprocal compensation on all but Internet-bound traffic, which is non-local”). As discussed below, this refusal violates the competitive checklist.

Federal court decisions establish that 47 U.S.C. §§ 251(b)(5) and 252(d)(2) require payment of reciprocal compensation for calls to ISPs. No Commission precedent stands to the contrary, for the FCC’s determination that payment of reciprocal compensation for calls to ISPs is not required, and thus is not a checklist item, has been effectively superseded by Bell Atlantic Telephone Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000), in which the D.C. Circuit vacated the ISP Order. Id. at 3.

Indeed, the decisions of federal courts analyzing the Commission’s regulatory definition of “termination” lead inexorably to the conclusion that the competitive checklist affirmatively requires reciprocal compensation for ISP-bound traffic. Section 251(b)(5) requires reciprocal compensation for the “transport and termination of telecommunications.” The FCC has held that this provision requires reciprocal compensation only for “local telecommunications traffic,” meaning traffic “that originates and terminates within a local service area.” 47 C.F.R. §§ 51.701(a), (b)(1). The FCC’s regulations define “termination” for reciprocal compensation purposes as “the switching of local telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.” Id. § 51.701(d).

ISP-bound traffic “terminates” locally under the FCC’s regulations because “the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the ‘called party.’” Bell Atlantic, 206 F.3d at 6. Under these regulations, “‘termination’ occurs when [the ISP’s carrier] switches the call at its facility and delivers the call to ‘the called party’s

premises,' which is the ISP's local facility. Under this usage, the call indeed 'terminates' at the ISP's premises.'" Southwestern Bell Tel. Co. v. Pub. Utils. Comm'n of Tex., 208 F.3d 475, 486 (5th Cir. 2000); accord BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs. Inc., 97 F. Supp. 2d 1363, 1379 (N.D. Ga. 2000); Illinois Bell Tel. Co. v. WorldCom Techs. Inc., No. 98 C 1925, 1998 WL 419493, at *14 (N.D. Ill. July 21, 1998), aff'd, 179 F.3d 566 (7th Cir. 1999).^{23/}

Given these precedents, SWBT clearly has not satisfied the checklist because it indisputably does not currently pay reciprocal compensation for calls to ISPs in either Kansas or Oklahoma. For this reason, SWBT's application should be denied.^{24/}

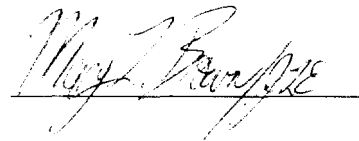
^{23/} ISP-bound traffic is also subject to reciprocal compensation because it constitutes local "telephone exchange service." It cannot be "exchange access" because ISPs do not connect to the local network "for the purpose" of the origination or termination of telephone toll services. 47 U.S.C. § 153(16); Bell Atlantic, 206 F.3d at 6. Rather, ISPs are "end-users" that provide "information services," which are "mutually exclusive" from telecommunications. Universal Service Report, ¶ 59. ISP-bound traffic must be telephone exchange service because it is not exchange access. See 706 Remand Order, ¶¶ 3, 7-14, 49; 706 Order, ¶ 40.

^{24/} The Oklahoma and Kansas commissions' view that this failure is not a bar to the satisfaction of the checklist neither governs these proceedings nor takes precedence over the views of federal courts. See, e.g., Southwestern Bell, 208 F.3d at 482; U S West Communications, Inc. v. MFS Intelenet, Inc., 193 F.3d 1112, 1117 (9th Cir. 1999), cert. denied, 120 S. Ct. 2741 (2000).

CONCLUSION

SWBT's application should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary L. Brown", is written over a horizontal line.

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November 15, 2000

CERTIFICATE OF SERVICE

I, Jerome L. Epstein, hereby certify that I have this 15th day of November 2000, caused a true copy of the Comments of WorldCom, Inc. to be served on the parties listed below:

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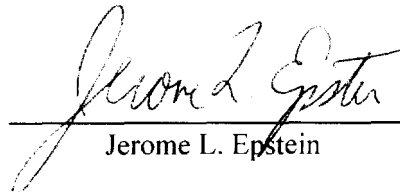
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